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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* TONY ALTWEIS and RAYMOND CHOCK

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Appeal 2009-015106  
Application 09/654,858  
Technology Center 3600

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*Before* MURRIEL E. CRAWFORD, ANTON W. FETTING, and JOSEPH  
A. FISCHETTI, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>1</sup>

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

## STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 (2002) of the Examiner's final decision rejecting claims 1 to 5, 10 to 12, and 15 to 25. We have jurisdiction over the appeal under 35 U.S.C. § 6(b) (2002).

We REVERSE.

Claim 10 is illustrative:

10. An improved system for software distribution over wide area computer networks, said networks comprising a network conduit, at least one e-commerce server computer in communication with said network conduit, at least one customer terminal computer in communication with said network conduit, and at least one supplier server computer in communication with said network conduit, each said computer comprising at least one programmable computer comprising input device, display device, processing device, storage device and device for communicating with said network conduit, the system comprising:

an e-commerce site for distributing licensing modules to each said customer terminal computer via said network conduit; and

a program download site for distributing program modules to each said customer terminal computer via said network conduit

wherein said licensing modules and said program modules each comprise executable software applications for execution on programmable computers, one said licensing module cooperating with one said program module to function as a whole software application, said distribution of one said program module is responsive to the prior execution of one said licensing module on one said customer terminal computer.

Appellants appeal the following rejections:

1. Claims 10 to 12, 15 to 25 under 35 U.S.C. § 102(e) as anticipated by Biddle (US Pub. 2002/0107809 A1, pub. Aug. 8, 2002).
2. Claims 1 to 5 under 35 U.S.C. § 103(a) as unpatentable over Biddle in view of Hayes (US Pub. 2001/0011341 A1, pub. Aug. 2, 2001).

### ISSUES

Did the Examiner err in rejecting claim 10 under 35 U.S.C. § 102(e) because Biddle does not disclose distribution of the program module responsive to the prior execution of the licensing module on a customer terminal computer?

Did the Examiner err in rejecting claim 18 because Biddle does not disclose storing the program module at a location other than the first software distribution point?

Did the Examiner err in rejecting claim 1 because neither Biddle nor Hayes discloses a licensing module for giving each said customer terminal computer permission to download a program module to said customer terminal computer?

### ANALYSIS

#### *Anticipation*

The Appellants argue that Biddle does not disclose distribution of the program module *responsive to* the prior execution of the licensing module. We agree.

We find that Biddle discloses that the software is distributed by downloading the software from a vendor's website (para. [0017]). The first

time that the user runs the software application after installation, the user is prompted to provide registration information to obtain a license (para. [0017]). The Examiner directs our attention to paragraph 73 of Biddle for teaching that the program module is distributed in response to prior execution of the licensing module. But paragraph 73 discloses that a code may run security checks when the vendor software is running on the user's computer to prevent piracy. This disclosure indicates that the software is distributed and running on the user's computer when the security checks take place. In addition, the Examiner at page 13 of the answer agrees that the user may obtain a license after downloading and installing the application. Therefore, in the Biddle method, the software is distributed *before* not *after* the license is obtained not *in response to* the prior execution of the licensing module.

In view of the foregoing, we will not sustain the Examiner rejection of claim 10 and claims 11, 12, and 15 to 17 dependent thereon.

The Appellants argue that Biddle does not disclose storing the program module at a location other than the first software distribution point when the licensing module is stored. We agree.

We find that Biddle discloses that the vendor obtains the licensing system from the distributor which includes a licensing server module and the vendor then integrates the licensing information with the software application (para. [0055]). Therefore, the licensing module and the program module are both stored at the vendor.

In view of the foregoing, we will not sustain the Examiner's rejection of claim 18 and claims 19 to 25 dependent thereon.

*Obviousness*

The Examiner recognizes that Biddle does not disclose a licensing module consisting of an executable software application which is executed on each of the customer terminal computers as required by claim 1. The Examiner relies on Hayes to provide this teaching. The Appellants argue that Hayes does not disclose a licensing module consisting of an executable software application which is executed on the customer terminal computer. We agree.

We find that Hayes discloses that when a user attempts to log onto the system, the server receives a user log-on identifier from the user. The server then uses this identifier to build a list of applications for which the user has access permission (para. [0013]). The server then downloads a desktop object to the user station to control the interface between the user and the user's station and a list of applications to which the user has access permission. The user's station uses the list to build a folder containing the applications to which the user has access permission (para. [0013]). Hayes discloses that the list is built on the server not on the customer's desktop. Therefore, we agree with the Appellants that Hayes does not disclose a licensing module consisting of a software application executed on the customer terminal computer. Therefore, we will not sustain the rejection of claim 1 and claims 2 to 5 dependent thereon.

DECISION

We REVERSE the Examiner's § 102(e) and § 103(a) rejections.

REVERSED

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